

questions. Dep. TR 27-28.

30. Hazelton continues to discuss the status of his Audubon application with Van Ginkel and to keep Van Ginkel informed about his application's status. Dep. TR 29. Hazelton admitted that "...when things are happening, we talk certainly once a week." Van Ginkel, who is an attorney, provided Hazelton advice prior to his deposition. Dep. TR 30. Van Ginkel may have provided Hazelton with advice concerning the price for the purchase of his proposed tower site. Dep. TR 44.

31. As fully outlined at paragraphs 11-13 above, Hazelton has been borrowing money from Wireless to pay the vast majority of his application costs. These loans are evidenced by promissory notes signed by Hazelton which are secured by Hazelton's stock in Wireless. Van Ginkel currently holds Hazelton's stock. Dep. TR 78. While interest continues to accumulate on these notes, Hazelton is under no obligation whatsoever to make payments and is unaware of the deadline for repayment on the notes. Dep. TR 67 & 70.

**B. Wireless Is An Apparent Undisclosed Party To
Hazelton's Application**

32. In its rulemaking filings before the Commission, Wireless asked the Commission that a new FM station should be allotted to Atlantic, Iowa. This made sense, considering that an FM station would have made the perfect companion to Wireless' current AM operation at Atlantic. Despite their efforts, the Commission chose to allot the new station to Audubon, Iowa, instead. However, instead of Wireless filing an application in its own name, an application bearing the name of Wireless's President and 15.4 percent shareholder, "Al Hazelton," was filed. Van

Ginkel did not believe Wireless application could possibly prevail over any competitor that did not have broadcast interests. Therefore, he must have concluded that a different route was needed to obtain the new FM station at Audubon, and put up Hazelton as a "front."

33. While at first glance it appears that Hazelton decided to go forward on his own, the totality of evidence shows that his application is really Wireless' filing in disguise. With front man like Al Hazelton, a career broadcaster and local resident, who pledged to divest his broadcast interest, the applicant would be able to make a more legitimate claim for full-time integration, and ipso facto, Wireless was more likely to prevail against potential competitors. Therefore, as the facts show, a last minute decision was made to substitute Al Hazelton as the applicant instead of Wireless.²¹

34. Hazelton's application was originally prepared for Wireless to file and Hazelton essentially stepped-in at the last minute to take its place. Van Ginkel was responsible for initially setting up the financing with First Whitney Bank & Trust and obtaining the proposed tower site. Wireless's attorney and consulting engineering went to work in order to have everything ready to file by the deadline. Even after Hazelton filed his application, Wireless has loaned him between 95-99% of the money

²¹ This may also explain why Hazelton's application is dated April 28, 1992, but the engineering portion is dated the next day, April 29, 1992. See Memorandum Opinion and Order, FCC 94M-148, released March 11, 1994. If the decision was made on April 28, 1992, to substitute Hazelton for Wireless, then the already-completed engineering portion of the application would have to be changed to show the applicant's name as "Al Hazelton" and not "Wireless Communications, Inc." With the window closing on April 30, 1992, it was too late to have Hazelton sign a second certification page.

he has had to spend thus far. While Hazelton claims that he must pay this money back and has signed promissory notes to this effect, his financial arrangement with Wireless is a complete sham. Hazelton hasn't made a single interest payment on the notes and Wireless has forgiven these payments to date. Hazelton does not even know when his promissory notes are due. Furthermore, Hazelton regularly discusses his Audubon application with Van Ginkel and calls upon him for advice. As these facts show, for all intents and purposes, Hazelton's application is Wireless' application.

35. Over the years, the Commission has been confronted with numerous cases of applications which contain undisclosed real parties. This has resulted in a litany of cases and policies in this area, too numerous to mention.²² However, out of all of these cases, the Commission has concluded that its "... real party-in-interest inquiry typically focuses on whether a third person 'has an ownership interest, or will be in a position to actually or potentially control the operation of the station.'" Astroline Communications Co. Ltd., Partnership v. FCC, 857 F.2d 1556, 1564 (D.C. Cir. 1988), citing, KOWL, Inc., 49 FCC 2d 962, 964 (Rev. Bd. 1974). A showing that the party in question can or will dominate the applicant is not necessary, only that a party "has some functional proprietary interest in the application...." Lowrey Communications, Ltd., 71 RR 2d at 1033 (references omitted). Therefore, "the sine qua non of a real-party-in-interest issue, is a showing that a party not named as a

²² For perhaps the best historical outline of the Commission's dealings with the issue of real-parties-in-interest, see Board Member Blumenthal's extensive analysis in Lowrey Communications, L.P., 71 RR 2d 1024, 1032-1033 (Rev. Bd. 1992).

principal holds either an undisclosed ownership interest or the functional equivalent thereof. Id (emphasis in original).

36. In this case, the facts show that Wireless has the functional equivalent of an ownership interest in Hazelton's application. Wireless came up with the idea to file the application; Van Ginkel did the leg work on the financing and site; Wireless' attorney and engineer did the necessary work to prepare the application. The Commission has recognized that a non-party's participation in such activities as securing the applicant's bank letter, as well as the non-party's prior business dealings with the applicant may be dispositive of the non-party's undisclosed interest in the application. See, Opportunity Broadcasting of Shreveport, Inc., 68 RR 2d at 1564 (a non-party secured the bank letter for the applicant); see also, Rayne Broadcasting Co., Inc., 5 FCC Rcd 3350, 3352 (Rev. Bd. 1990)(Board cites to previous business dealings between parties in adding real party issue); and KOWL, Inc., 49 FCC 2d at 964. In this case, Van Ginkel and Hazelton have been in business together as broadcasters since at least January, 1988 and Van Ginkel helped Hazelton obtain his bank letter from First Whitney. Given these facts, there is ample reason to believe that Wireless and/or Van Ginkel has an active interest in and will continue to control Hazelton's application.

37. Most disturbing is the fact that, unbeknownst to the Commission, Wireless has been secretly financing Hazelton's application. Van Ginkel holds Hazelton's stock as security for payment of this debt, some of which is unpaid and overdue. Van Ginkel can demand payment on these notes at any time and can use his

financial leverage as a bludgeon with which to bend Hazelton to his will. See, Shawn Phalen, 7 FCC Rcd 623, 625 (Rev. Bd. 1992). The Commission has recognized that "one of the most powerful and effective methods of control of any business, organization, or institution...is the control of its finances." Id at 624-625. When there is evidence that a source close to the applicant (spouse, family member, prior business partner, etc.) has been paying the applicant's expenses, the Commission has not hesitated to add a real party issue. See, Opportunity Broadcasting of Shreveport, Inc., 68 RR 2d at 1564; Ocean Pines LPB Broadcast Corp., 5 FCC Rcd 5821 (Rev. Bd. 1990); and KOWL, Inc., 49 FCC 2d at 694. Here, the evidence shows unmistakably that Wireless has been paying the vast majority of Hazelton's expenses. Furthermore, the fact that Hazelton has not made any of the interest payments he owes to Wireless and Wireless is extending Hazelton a favorable interest rate that he would not otherwise have been able to obtain, call into question whether an arms-length debtor-creditor relationship exists in this situation. See, KOWL, Inc., 49 FCC 2d at 694.

38. The Commission has stated that "[T]he burden is and should be upon the applicant to satisfy the Commission, not only that he has financial ability to construct and operate a station, but financial ability to construct and operate it free of control, direct or indirect." Id. Given the facts in this case, Hazelton has not met the Commission's burden. Hazelton cannot even pay his bills without assistance from Wireless; therefore, it is difficult to believe that he will be able to operate a competing media outlet without Wireless seeking to exert some control over its

operations. This, when unmasked, is a "sweetheart deal" for KJAN and Hazelton. Nothing else could explain why KJAN would, so to speak, be willing to buy the bullets for use at its own execution by an FM "firing squad."

V. HAZELTON'S PARTICIPATION IN AN UNAUTHORIZED TRANSFER OF CONTROL OF KJAN(AM AND MISREPRESENTATIONS RELATED THERETO RAISES QUESTIONS CONCERNING HIS CHARACTER QUALIFICATIONS

A. Background - Unauthorized Transfer of Control

39. As detailed previously in this pleading, Wireless is the licensee of AM station, KJAN, Atlantic, Iowa. J.C. Van Ginkel is Chairman, director, treasurer and secretary, and 38.46 percent stockholder. Al Hazelton is a 15.4 percent stockholder and was previously Wireless' President and director.

40. In 1988, Wireless purchased KJAN from its previous licensee. (See File No. BAL-870828EF.) The assignment of license to Wireless was consummated on January 12, 1988. See Exhibit 8. The Ownership Report filed by Wireless on February 12, 1988, represented that as of January 12, 1988, there were just two stockholders - J.C. Van Ginkel and Steve Eaton, each of whom purportedly held 50 percent of the stock of Wireless. See Exhibit 8.

41. But that report was not true. On January 2, 1988, prior to the consummation of the assignment of license of KJAN to Wireless, an agreement was executed between Wireless and Hazelton. See Exhibit 9. Through this Agreement, Hazelton received 100 shares of Wireless common voting stock, which represented a

13.3 percent interest in the corporation. See Exhibit 9.²³

42. At his deposition, Hazelton acknowledged that he became a stockholder of Wireless in January, 1988. See Dep. TR 9. He admitted having received his Wireless stock in January, 1988 and his stock certificates reflect a January, 1988 date.²⁴ See Exhibit 9 and Dep. TR 9, 17 & 71-72. Hazelton admitted that he held his stock from the time he received it until he signed the June 2, 1992, Security Agreement to secure his promissory notes with Wireless. See Dep. TR 18.

43. On March 10, 1988, J. C. Van Ginkel and the five new Wireless stockholders signed an "Acknowledgement of Stock Transfer Restriction," which on its face recites that they are all Wireless stockholders. See Exhibit 10. Hazelton admitted that he and the other signatories executed the Acknowledgement on that day and stated that this agreement has been in effect since March 10, 1988. See Dep. TR 75.

44. On May 16, 1988, more than four months after Hazelton acquired his stock interest in the licensee of KJAN, an application (File No. BTC-880516ED) for

²³ Although Hazelton did not produce any stockholders agreements with any other parties (he was not required to), it is reasonable to assume that on January 2, 1988, 13.3 percent interests were also sold to Merlin Christensen, Robert G. Einhaus, Everett G. Faust and Franklin G. Miller. Therefore, a total of 66.5 percent of the capital stock of Wireless was apparently transferred from Messrs. Van Ginkel and Eaton to the five new Wireless stockholders on January 2, 1988, resulting in a transaction that required advance approval by filing an application for "long-form" transfer of control of Wireless.

²⁴ The stock certificate produced by Hazelton bears on its obverse the date "2nd day of _____ 1988." The reverse reflects the date "_____ of January 1988." The material in the blanks was obliterated in copying. On February 24, 1994, Hazelton's counsel agreed to provide Mr. Meredith with a more legible copy of the certificate, but it had not arrived by the deadline for this pleading.

consent to transfer of control was finally filed with the FCC. See Exhibit 11.

"Exhibit No. One" to the application stated: "The corporation currently has two owners, J.C. Van Ginkel and Steve Eaton, each of whom own 21 voting shares. The agreement among the parties is for the shares of Steve Eaton to be redeemed in full and for the corporation to in turn issue additional shares to the remaining shareholder and additional shares to the five new owners...." That statement was untrue, as Hazelton and the others already had their stock. Id. "Exhibit No. Two" to the application made similar representations. Hazelton acknowledged that these representations were made in the application. See Dep. TR 82. "Exhibit No. Four" to the application was an undated copy of the "Acknowledgement of Stock Transfer Restriction," referred to above. Hazelton at Dep TR 83 admitted that the documents looked "identical" to him. Question 9 of the Transferee's part of BTC-880516ED required the submission of "Exhibit No. Four," which Wireless described as a "copy of the buy-sell agreement." However, the document Wireless submitted was different from the original signed document, for if Wireless had submitted the Acknowledgement in its original form, it would have revealed that on March 10, 1988, the proposed transferees were already stockholders of KJAN. To eliminate the incriminating evidence, the copy of the Acknowledgement submitted as "Exhibit No. Four" was apparently altered to delete the signatures and/or dates at the bottom of the page. When asked if he knew why the copy submitted to the Commission did not contain this signatures and dates, Hazelton stated: "I do not. That was all done by Mr. Van Ginkel. I don't know." See Dep. TR 83. All of the stockholders,

including Al Hazelton, signed the transfer of control application on May 9, 1988. Wireless's motive was clear in altering the document, since it avoided a highly predictable enforcement action by the Commission for violation of Section 310 of the Communications Act.

B. Hazelton Was A Party To An Unauthorized Transfer of Control Of KJAN In January, 1988

45. It appears uncontrovertible that on or about January 2, 1988, Al Hazelton was a party to a unauthorized transfer of control of KJAN, Atlantic, Iowa. It appears that Hazelton and four other stockholders, received a combined 66.5 percent interest in the corporation. Since Van Ginkel and Eaton lost negative control of Wireless, a transfer of control of KJAN took place.²⁵ This was not reported to the Commission for over four months and was accomplished without prior Commission approval, a clear violation of §310(d) of the Communications Act and §73.3540 of the Commissions' rules. Hazelton was a willing participant in this scheme, accepting his stock prematurely from Wireless, signing an application that he knew contained material misrepresentations and helping to conceal the true facts from the Commission. Such behavior raises concerns as to whether Hazelton possesses the

²⁵ See, Grace Missionary Baptist Church, 48 RR 2d 129 (1981); see also, Instructions To FCC Form 323, at pp. 2-3, where the Commission notes that a transfer of control takes place where an individual stockholder (in this case J.C. Van Ginkel) gains or loses affirmative or negative (50%) control or where more than 50% of the stock is transferred to stockholders who did not hold stock at the time the original authorization for license was obtained by the corporation. It has been established that, at minimum, Van Ginkel and Eaton lost negative control on January 2, 1988, through Hazelton's acquisition of 100 shares of Wireless stock. It is more likely that Hazelton and the other four new stockholders actually acquired positive control.

necessary basic character qualifications to be a Commission licensee.

45. The Commission will "treat violations of the Communications Act, Commission rules or Commission policies as having a potential bearing on character qualifications." Policy Statement on Character, 59 RR 2d 801, 822 (1986). Here, a clear violation of both the Act and rules has been shown to have occurred. A question is therefore raised as to what impact such conduct, which involved another authorization and a corporation in which Hazelton was a officer, director and shareholder, has on Hazelton's basic character qualifications in this proceeding. While the Commission has stated there is "no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations," it has also found that "some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license." Policy Statement on Character, 59 RR 2d at 831. In this case, Hazelton's past record of aggravated noncompliance with the Communications Act and Commission's rules concerning the apparent unauthorized transfer of control of KJAN(AM) provides direct evidence of his anticipated future behavior as a potential licensee of his own radio station. See, Mid-Ohio Communications, 104 FCC 2d 572 (Rev. Bd. 1986). Appropriate issues should be designated against Hazelton to determine the impact of his past behavior on his basic qualifications in this case.

C. **Apparent Material Misrepresentations
Were Made To The Commission**

46. Further exacerbating the wrongdoing in this case, was the fact that Wireless not only made an apparent material misrepresentation in its filing to the

Commission, it also altered an exhibit document in what must be recognized as an effort to cover-up its past misconduct. When Wireless finally filed its transfer of control application in May, 1988, over four months after the transfer took place, it misrepresented that its ownership structure consisted of just two stockholders - Van Ginkel and Eaton. While it attached a copy of the March, 1988, Acknowledgement of Stock Transfer Restriction, Wireless apparently masked the signatures and dates on this document which would have shown that a transfer had already taken place. Hazelton was a party to this apparent misrepresentation and document altering, by signing the May, 1988 application which he knew, or should have known, contained false and altered information. The Commission does not take lightly an applicant that includes false information in its submissions before it and will disqualify the applicant for this type of conduct. See, Atkins Broadcasting, 71 RR 2d 1398 (1993); and WHW Enterprises, Inc. v. FCC, 753 F2d 1132, 1139 D.C. Cir. 1981). "The Commission must be able to rely on the completeness and accuracy of submissions made to it." WHW Enterprises, Inc. v. FCC, supra. By joining in an application that contained false and misleading information, Hazelton not only violated the Commission's rules, but he has also raised the more immediate concern of his ability to be truthful in his dealings with the Commission. See, Policy Statement, 59 RR 2d at 822.

D. The Altered Document Contained In The KJAN(AM) Filing Shows Motive

47. In order for the Commission to find that a misrepresentation has occurred, it must also find the requisite "intent to deceive." See, Pinelands, Inc., 71

RR 2d 175, 183 (1992), citing, Fox River Broadcasting, Inc., 93 FCC 2d 127 (1983).

Hazelton's "intent to deceive" can readily be inferred from the circumstances surrounding the transfer of control of KJAN(AM). By falsely representing that Messrs. Van Ginkel and Eaton were the only stockholders and by submitting an altered copy of the stock restriction agreement, Wireless successfully concealed the transfer for six years. It appears that Van Ginkel told the Commission in 1987 that he and Steve Eaton planned to buy KJAN, but Eaton never acquired his stock. Instead, ten days before the date Wireless represented Van Ginkel and Eaton were equal shareholders in Wireless, Eaton was out as a shareholder and Hazelton and the other four Wireless stockholders were in. Later, Van Ginkel must have recognized that control of KJAN had passed without the FCC's authorization, but instead of confessing and asking for the Commission to authorize the premature transfer, Van Ginkel and the other Wireless stockholders apparently participated in a scheme to cover up the unauthorized transfer by submitting an altered document to the Commission. A more clear motive is hard to conceive.

VI. CONCLUSION

48. Al Hazelton's application is really a proposal designed, prepared and paid for by Wireless. The Commission is rarely presented with such a clear-cut case of an individual "fronting" for another entity. The issues should be enlarged in this case to permit full discovery and to uncover the full extent of Wireless' involvement in Hazelton's application. Based upon this evidence, the Commission may also find the ownership representations contained in Hazelton's application and related filings are

false and that, as such, he does not possess the necessary basic qualifications to be a Commission licensee.

49. Questions also abound concerning the bona fides of Hazelton's financial commitment from First Whitney. For example:

- Did Hazelton know all of the bank's lending criteria when he filed his application?
- Did the bank review Hazelton's financial documentation to verify his ability to contribute 50% of his proposed budget?
- How will Hazelton be able to fund a \$600,000 budget when he has less than one half of that amount from a committed source and is currently borrowing money from Wireless just to pay his expenses?
- Would First Whitney have made its commitment to Hazelton absent its illegal spousal co-guarantor requirement?

Only by enlarging the issues in the case against Hazelton can the Commission hope to answer these additional important questions.

50. Finally, Mr. Meredith has presented evidence that a Hazelton was party to an apparent unauthorized transfer of control of Wireless, that misrepresentations were made in the transfer of control application that was eventually submitted to the Commission, and that such conduct could have a clear impact on Hazelton's basic qualifications in this proceeding. Therefore, appropriate unauthorized transfer of control, misrepresentation and character impact issues should be added against Hazelton.

VII. ISSUES REQUESTED

51. Section 1.229(d) provides that Motions To Enlarge Issues must contain specific allegations of fact and must be supported by affidavits of persons with

personal knowledge thereof. 47 C.F.R. §1.229(d). Mr. Meredith has met that burden. Several prima facie questions have been raised that require the addition of the following issues against Hazelton:

- a. To determine whether, at the time he filed his application, Hazelton was financially qualified to construct and operate his proposed facilities for three months?
- b. To determine whether Hazelton is currently financially qualified to construct and operate his proposed facilities for three months?
- c. To determine whether Hazelton falsely certified or misrepresented his financial qualifications in his application?
- d. To determine whether Hazelton's unreported reliance on Wireless Communications, Inc., as source of financing was a violation of §1.65 and/or §73.3514 of the rules?
- e. To determine whether Wireless Communications, Inc., is an undisclosed party to Hazelton's application?
- f. To determine whether Hazelton participated in violation of Title 47 U.S.C. §310(d) in an unauthorized transfer control of the licensee of KJAN(AM), Atlantic, Iowa?
- g. To determine whether Hazelton made misrepresentations or was lacking in candor in an application (File No. BAL-870828EF) for transfer of control of Wireless?
- h. To determine, in light of the evidence addressed pursuant to Issues (f) and (g) the impact thereof on Hazelton's basic qualifications to be a Commission licensee?
- i. To determine in light of the evidence adduced under the above issues, whether Hazelton possess the requisite basic qualifications to be a Commission licensee?

A. Additional Discovery Requests

52. Should the Presiding Judge grant this Motion To Enlarge Issues, it is also requested that the Judge order Al Hazelton to produce the following additional

documents to be delivered to undersigned counsel at their offices within 10 days of the release of any order enlarging the issues:

Definitions

- a. The term "Document" means the copies of the original and any nonidentical copy and/or amendment thereof, of any letter, memorandum, report, handwritten note, working papers, summary of data, data compilation sheet, interview report, record, bill, receipt, cancelled check, order, audio and/or video, or video recording, or any other handwritten, typed, printed or graphic materials, data, data base or computer file or computer generated output of any form to which Mr. Hazelton or any of his agents or representatives have access. Copies of documents already on file at the Commission need not be produced, but must be identified.
- b. The term "representative" or "agent" includes, but is not limited to, present and former legal counsel, engineering and all other consultants, accountants, employees or agents.
- c. "Or" means "and/or."
- d. "Relating to" or "related to" mean whether the requested document constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to the specified subject, including documents concerning the preparation of other documents.
- e. "Application" means the Application For Construction Permit (File No. BPH-920430ME) filed by Al Hazelton for authority to construct a new FM station on Channel 243C1 at Audubon, Iowa.

Documents Requested - Financial Qualifications-Real Party in Interest-Unauthorized Transfer of Control of KJAN

- a. Copies of Al Hazelton's personal financial statements or other financial documents reflecting his net liquid assets and liabilities as of April 28, 1992, and as of February 1, 1994.
- b. Copies of Hazelton's federal income tax returns for calendar years 1990, 1991, 1992, and 1993 (if available).

- c. Copies of any and all documents between Hazelton or any of his representatives (including, but not limited to, all stockholders, officers, and directors of Wireless) and First Whitney Bank & Trust, its employees or representatives, including, but not limited to, Frank Greiner, relating to the Bank's letter dated April 29, 1992, to Hazelton with respect to the proposed loan for Mr. Hazelton's new Audubon FM station.
- d. Copies of any documents submitted to First Whitney Bank & Trust by Hazelton or any of his representatives including any stockholder, director, officer, employee, or agent of Wireless concerning the Bank's proposed loan commitment for Mr. Hazelton's new Audubon FM station or any documents submitted to Mr. Hazelton from First Whitney Bank & Trust concerning said loan letter.
- e. Copies of any documents, notes or other memoranda of conversations between Hazelton or any of his representatives and representatives of First Whitney Bank & Trust concerning the Bank's proposed loan letter.
- f. Copies of any and all documents sent between First Whitney Bank & Trust and any stockholder, officer, or director of Wireless regarding any request from Wireless to the bank for a letter evidencing the bank's provision of financial assurances to Wireless when Wireless was considering filing an application to construct a new FM station at Audubon, Iowa.
- g. Copies of all documents evidencing any payment ever made by Wireless to Hazelton, and Hazelton to Wireless from the date when Wireless filed a petition for rulemaking to allot a new FM channel to Atlantic until the present, including payments to Wireless's attorneys, engineers, and any other person or entity relative to the new FM station application.
- h. Copies of documents (and correspondence) between any persons who have ever been Wireless stockholders since January 2, 1988, relating to the acquisition of an interest in Wireless and any plan to acquire a new FM station that would place a city-grade signal over Atlantic and Audbon.

53. In addition, should the issues be enlarged as requested herein, Mr.

Meredith will seek to depose the following individuals:

Financial Issues

1. Al Hazelton
2. Ella Hazelton
3. Frank Greiner²⁶
4. The Chief Executive Officer of First Whitney Bank & Trust
5. The Chairman of the Board of Directors of First Whitney Bank & Trust
6. J.C. Van Ginkel
7. And any other representative of Mr. Hazelton's who may have had dealings with First Whitney on Mr. Hazelton's behalf.

Real Party Issues/Unauthorized Transfer of Control Issues

1. Al Hazelton
2. Steve Eaton
3. J.C. Van Ginkel
4. Merlin Christensen
5. Robert G. Einhaus
6. Everett G. Faust
7. Franklin G. Miller
8. Barry Friedman
9. Frank Greiner
10. Donald L. Markley
11. Glen R. Smith

B. Consideration of Forfeiture

54. Finally, should it be found that Mr. Hazelton has misrepresented facts to the Commission concerning his Audubon application or misrepresented facts in his

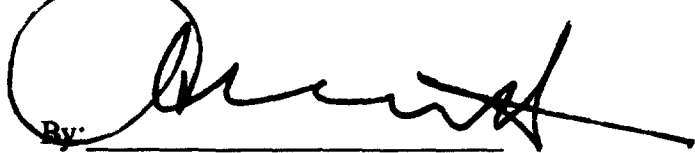
²⁶ Since Mr. Greiner may be called to a deposition in this proceeding, Mr. Meredith is serving a copy of this pleading upon him by mail. See the attached "Certificate of Service."

previous submission concerning the transfer of control of KJAN(AM), the Commission should consider the imposition of a forfeiture of up to \$250,000. See §1.229(f) and Standards For Assessing Forfeitures, 8 FCC Rcd 6215 (1993).

WHEREFORE, the above-premises considered, Stephen O. Meredith respectfully requests that the issues in this proceeding be enlarged against Al Hazelton, as outlined herein and that Mr. Hazelton be ordered to produce those documents detailed above.

Respectfully submitted,

STEPHEN O. MEREDITH

By: 

Gary S. Smithwick
Shaun A. Maher

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

March 11, 1994

lpd\audubon\3-11.mo2

EXHIBIT 1

**Portions of Application of Al Hazelton for a New FM Station
at Audubon, Iowa**

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

| | | |
|-----------------------------|----------|--|
| For COMMISSION Fee Use Only | FEE NO: | For APPLICANT Fee Use Only |
| | FEE TYPE | Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| | FEE AMT: | If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity |
| | ID SEQ: | FOR COMMISSION USE ONLY FILE NO. <u>BPH-920430M2</u> |

Section I - GENERAL INFORMATION

| | | | | | |
|---|-------------|-------------------|--|-------------|-------------------|
| 1. Name of Applicant AL HAZELTON | | | Send notices and communications to the following person at the address below: Name Barry A. Friedman Semmes, Bowen & Semmes | | |
| Street Address or P.O. Box 304 Durant | | | Street Address or P.O. Box 1025 Connecticut Avenue, NW | | |
| City Harlan | State IA | ZIP Code 51537 | City Washington | State DC | ZIP Code 20036 |
| Telephone No. (Include Area Code) (712) 243-3920 | | | Telephone No. (Include Area Code) (202) 822-8250 | | |

2. This application is for: ☐ AM ☒ FM ☐ TV

| | | | |
|---------------------------------------|------------------------------------|-----------------|-------------|
| (a) Channel No. or Frequency 243C1 | (b) Principal Community Audubon | City Audubon | State IA |
|---------------------------------------|------------------------------------|-----------------|-------------|

(c) Check one of the following boxes:

☒ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: _____

☐ MINOR change in licensed facilities; call sign: _____

☐ MAJOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐ MINOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐ AMENDMENT to pending application; Application file number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

| | | |
|--------------|----------------------|-------|
| Call letters | Community of License | |
| | City | State |

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 600,000.00

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

| Source of Funds (Name and Address) | Telephone Number | Relationship | Amount |
|---|------------------|--------------|--------------|
| Whitney Bank & Trust 223 Chestnut Street Atlantic, Iowa 50022 Contact: Frank Greiner Executive Vice President | (712) 243-3195 | Bank | \$650,000.00 |

EXHIBIT 2

**Letter from Frank Greiner of First Whitney Bank & Trust to
Al Hazelton**

Personal Guarantee of Ella Hazelton



FIRST WHITNEY BANK & TRUST ATLANTIC, IOWA 50022

April 29, 1992

Mr. Al Hazelton
304 Durant
Harlan, Iowa 51537

Dear Mr. Hazelton:

We understand that you will apply to the Federal Communications Commission ("FCC") for a construction permit to build and operate a new FM radio station in Audubon, Iowa.

The purpose of this letter is to advise you that First Whitney Bank & Trust completed its review of your request for a loan to cover equipment cost and working capital requirements for the new station. Based upon that review, we are willing, in principle, to lend you up to \$650,000.00, subject to approval by First Whitney Bank & Trust's Board of Directors, for the above purposes, provided that the following conditions are met:

1. You are successful in obtaining approval from the FCC to construct and operate the proposed station; and

2. All reasonable and ordinary credit criteria of First Whitney Bank & Trust are met at such time as you (a) receive the construction permit; (b) request a formal lending commitment from First Whitney Bank & Trust; and (c) execute all customary documentation normally required by First Whitney Bank & Trust.

While the pricing and terms of the amortization of the loan will be contingent upon the exact credit conditions prevailing at the time the loan is extended, at present we would intend to calculate interest at ten percent. Any loan made will be repaid over a ten year period, interest only for the first three years with principal and interest payments beginning in the fourth year. The loan will be collateralized with all the assets of the station and of course your and Ella's personal guarantee.

While this letter is not intended as a legal commitment from the First Whitney Bank & Trust, it is intended to provide you and the FCC with a reasonable assurance that these funds will be made available on the



Mr. Al Hazelton

-2-

4-29-92

terms stated for the purpose of constructing and operating the proposed station. Our loan documents will comply with all requirements of the FCC, specifically including all relevant restrictions on the exercise of rights by First Whitney Bank & Trust under any security agreements.

We look forward to working with you in connection with this venture.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank W. Greiner".

Frank W. Greiner
Executive Vice President

PERSONAL GUARANTEE

The undersigned hereby agrees to execute a personal guarantee in connection with a loan from the First Whitney Bank & Trust to Al Hazelton to finance a new FM radio station at Audubon, Iowa.

Ella H. Hazelton
Ella Hazelton